

BURL WASHINGTON, )  
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 Plaintiff, )  
 )  
 v. ) No. 4:07CV1523 DJS  
 )  
 MICHAEL GENE STACY, et al., )  
 )  
 Defendants. )

This matter is before the Court on plaintiff's notice of appeal. On July 9, 2008, the Court dismissed plaintiff's complaint for failure to prosecute and for failure to comply with the Court's orders. The case was assigned to Judge Limbaugh Sr. at that time. On September 8, 2008, plaintiff filed a motion for reconsideration. On September 12, 2008, the case was reassigned to the undersigned judge, because Judge Limbaugh Sr. had since retired. On September 16, 2008, the Court granted plaintiff's motion for reconsideration and vacated its previous order dismissing this action. On September 17, 2008, plaintiff filed the instant notice of appeal from this Court's July 9, 2008, Order dismissing this case.

Plaintiff is a prisoner proceeding in forma pauperis in this action. If plaintiff wishes to pursue his appeal, he must pay the full amount of the \$455 appellate filing fee. See 28 U.S.C. § 1915(b)(1). However, because of the timing issues involved, the

Court believes that plaintiff might prefer to withdraw his appeal rather than to prosecute it at this time.

If plaintiff wishes for this Court to dismiss the appeal, he must comply with the terms of Rule 42(a) of the Federal Rules of Appellate Procedure.<sup>1</sup> If, on the other hand, plaintiff wishes to prosecute his appeal, he must file a motion for leave to proceed in forma pauperis on appeal along with a certified copy of his prison account statement for the six-month period immediately preceding the date he filed the notice of appeal. Plaintiff must comply with this Order no later than **November 14, 2008**.

Accordingly,

**IT IS HEREBY ORDERED** that, no later than **November 14, 2008**, plaintiff must **either** (1) file an appropriate motion for voluntary dismissal of his appeal **or** (2) file a motion for leave to proceed in forma pauperis on appeal along with a certified copy of his prison account statement for the six-month period immediately preceding the date he filed the notice of appeal.

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<sup>1</sup>Rule 42(a) states, “Before an appeal has been docketed by the circuit clerk, the district court may dismiss the appeal on the filing of a stipulation signed by all parties or on the appellant's motion with notice to all parties.”

**IT IS FURTHER ORDERED** that the Clerk shall forward to plaintiff a form “Motion to Proceed on Appeal in Forma Pauperis and Affidavit in Support – Prisoner Cases.”

**IT IS FURTHER ORDERED** that if plaintiff fails to comply with this Order, the Court will order plaintiff to pay the \$455 appellate filing fee.

Dated this 20th Day of October, 2008.

/s/Donald J. Stohr  
UNITED STATES DISTRICT JUDGE